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DATE FILED: 12/7/15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORRIS MAY

Movant,

v.

CENTRAL RABBINICAL CONGRESS OF THE UNITED STATES AND CANADA, ET AL.

Plaintiffs

v.

NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE, ET AL.

Defendants

CASE NO. 12-CIV-7590 (NRB

JUDGE NAOMI REICE BUCHWALD

PRO SE MOVANT MAY'S MOTION FOR ATTORNEY FEES AND COSTS, TO CERTIFY QUESTIONS, AND TO EXPEDITE

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I, Morris May ("May"), the pro se movant herein, hereby moves the Court for attorney fees and costs under 42 U.S.C. Sections 1988 and 1988(b). to certify questions to the United States Supreme Court under 28 U.S.C. Section 1254(2), and to expedite under Rule 1 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.").

MEMORANDUM IN SUPPORT

The pro se movant May submitted for filing a motion for leave to file an amicus curiae brief in the United States Court of Appeals for the Second Circuit ("Court of Appeals"), which was denied for filing as an over sized brief on November 19, 2014. A motion to correct the omission was filed on December 10, 2014 (DOCUMENT 69), which was unopposed, and denied by this Court on February 11. 2015. The March 17, 2015 motion was denied by MEMO ENDORSED on April 1, 2015. The April 17, 2015 motion was treated as a NOTICE OF APPEAL and denied leave to proceed in forma pauperis under 28 U.S.C. Section 1915(a)(3) on May 7, 2015. The appeal was docketed in the Court of Appeals on May 8, 2015. The Court's order denying leave to proceed in forma pauperis is appealable. Johnson v. United States, 352 U.S. 565, 566 ((1957); Roberts v. United States District Court for the Northern District of California, 339 U.S. 844, 845 ((1950) (per curiam); and Chabot v. National Securities and Research Corporation, 290 F. 2d 657, 658 (2nd Cir 1961). The May 20, 2015, June 8, 2015, June 12, 2015, and August 11, 2015 motions argued the issue of in forma pauperis. The Court of Appeals granted the motion for leave to proceed in forma pauperis on August 13, 2015. The pro se movant May prevailed on the issue or claim of in forma pauperis and is entitled to an award of attorney fees and costs as a prevailing pro se movant. Leftridge v. Connecticut State Trooper Officer # 1283, 640 F.3d 62, 69 (2nd Cir. 2011). Under 42 U.S.C. Sections 1988 and 1988(b), attorney fees are part of the costs. Edwards v. Huntington Union Free School District, 957 F. Supp. 2d 203, 214-215 (E.D. N.Y. 2013). The pro se movant May's legal papers filed in the district court and in the Court of Appeals are property and civil rights under 42 U.S.C. Sections 1981 and 1982. Attorney fees under 42 U.S.C. Sections 1988 and 1988(b) are for 42 U.S.C. Sections 1981 and 1982. Wilder v. Bernstein, 975 F. Supp. 276, 287 (S.D.N.Y. 1997).

The pro se movant May is claiming attorney fees and costs for work in the Court of Appeals and in this Court. Valmonte v. Bane, 895 F. Supp. 593, 600 (S.D.N.Y. 1995).

An amicus curiae and a movant are a nonparty. Clark v. Sandusky, 205 F.2d 915, 917 (7th Cir. 1953). The pro se movant May is privy to the Court of Appeals and the district court record as a pro se nonparty movant. City of New York v. Beretta U.S.A. Corporation, 315 F. Supp. 2d 256, 265 (E.D.N.Y. 2004), 401 F. Supp. 2d 244, 298)E.D.N.Y. 2005), aff'd 524 F.3d 384 (2nd Cir. 2008), cert. den. 129 S.Ct. 1579 (2009); and Adams v. Morton, 581 F. 2d 1314, 1318 (9th Cir. 1978), cert. den. 440 U.S. 958 (1979). The pro se movant May had a vital interest in the issue of in forma pauperis, Russell v. Board of Plumbing Examiners, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999), was vitally affected by the outcome of the appeal on August 13, 2015, Russell, supra at 351, fn. 2 (S.D.N.Y. 1999), and as a pro se nonparty movant is entitled to attorney fees and costs under 42 U.S.C. Sections 1988 and 1988(b) as a prevailing pro se nonparty movant. Russell, supra at 352 (S.D.N.Y. 1999), aff'd 1 Fed. App'x 38 (2nd Cir. 2001). The pro se movant May had several interests as a Jew in submitting for filing a motion for leave to proceed as an amicus curiae in support of the plaintiffs and the issue of metzitzah b'peh (DOCUMENT 69, DOCUMENT "A"), which is a property right and a civil right under 42 U.S.C. Sections 1981 and 1982 and protected under the Due Process Clause of the 14th Amendment of the United States Constitution.

Under 42 U.S.C. Sections 1988 and 1988(b), "plaintiffs, who can afford to hire their own lawyers, as well as impecunious litigants, may take advantage of this provision." Blanchard v. Bergeron, 489 U.S. 87, 94 (1989). The "impecunious litigants" are the pro se litigants. Blanchard, supra at 87 (1989), was cited in Valmonte, supra at 600 (S.D.N.Y. 1995), and the Court of Appeals in Townsend v. Benjamin Enterprises, Inc. 629 F.3d 41, 59 (2nd Cir. 2012)

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A pro se litigant, Shepherd v. Wenderlich, 746 F. Supp. 2d 430, 431 (N.D.N.Y. 2010), was awarded $1.00 damages and $1.40 attorney fees nder 42 U.S.C. Sections 1988 and 1988(b). Shepherd v. Goord, 662 F. 3d 603, 610 (2nd Cir. 2011). The fees were capped under 42 U.S.C. Section 1997e(d)(2). Shepherd, supra at 605 (2nd Cir. 2011).

A pro se litigant, Bandera. City of Quincy, 344 F. 3d 47, 48 (1st Cir. 2003), was awarded attorney fees and costs under 42 U.S.C. Sections 1988 and 1988(b). Bandera, supra at 52 (1st Cir. 2003).

A pro se litigant as awarded attorney fees and costs under 42 U.S.C. Sections 1988 and 1988(b). Parker v. Lewis, 670 F.2d 249, 250 (D.C. Cir. 1982).

A pro se litigant was awarded attorney fees and costs under 42 U.S.C. Section 1988 for work at the district court and the appellate court. Burt v. Hennessey, 929 F. 2d 457, 460 (9th Cir. 1991). This case was cited in Nugget Hydroelectric, LP v. Pacific Gas and Electric Company, 981 F.2d 429, 439 (9th Cir. 1992), cert. den. 508 U.S. 908 (1993).

Metzitzah b'peh and the pro se movant May's legal papers in the Court of Appeals and this Court are property rights and civil rights under 42 U.S.C. Section 1981 and 1982. The hourly rate for civil rights is $600.00 an hour. Rozell v. Ross-Holst, 576 F. Supp. 2d 527, 546 (S.D.N.Y. 2008). The pro se movant May is claiming seven (7) months of intensive and extensive research for the preparation and submission for filing of the November 15, 2013, motion for leave to file an amicus curiae brief (DOCUMENT 69, DOCUMENT "A"), 120 hours for each month, for a total of 840 hours. From August, 2014 to November, 2014, 140 hours for each month, for a total of 560 hours, for the motion filed in this Court (DOCUMENT 69). For the March 10, 2015 motion a total of twenty hours. For the April 17, 2015 motion a total of 40 hours. For the May 20, 2015 motion filed in the Court of Appeals a total of 40 hours. For the June 8, 2015 motion a total of 30 hours. For the June 12, 2015 motion filed in the Court of Appeals a total of 30 hours. For the August 11, 2015 motion filed in the Court of Appeals a total of 20 hours. For the motion for reconsideration and motion reconsideration en banc filed on August 26, 2015, a total of 60 hours. The total number of hours for the intensive and extensive research for the preparation and submission of legal papers for filing is 1,600 hours. 1,600 hours multiplied by $600.00 an hour is $960,000.00.

The certified questions are attached hereto as DOCUMENT "O." The certified questions were submitted for filing and returned as the mandate of the Court of Appeals was issued on November 2, 2015, in Appeal No. 15-1524.

Respectfully submitted,

Morris May

Morris May (pro se)
Movant
P.O. Box 558
Cincinnati, Ohio 45222-0558

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PRO SE MOVANT MAY'S MOTION FOR ATTORNEY FEES AND COSTS, TO CERTIFY QUESTIONS, AND TO EXPEDITE was sent to Mr. Shay Dvoretzky, Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001 and Michelle Goldberg-Cahn and Rachel K. Moston, Office of the Corporation Counsel, New York City Law Department, 100 Church Street, New York, New York 10007 by first-class U.S. mail on this 1st day of December, 2015.

Morris May

Morris May (pro se)
Movant

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MORRIS MAY

APPEAL NO. 15-1524

PRO SE MOVANT-APPELLANT MAY'S

MOTION TO CERTIFY QUESTIONS

Movant-Appellant

v.

CENTRAL RABBINICAL CONGRESS OF THE U.S.A. & CANADA, ET AL.

Plaintiffs

v.

NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE, ET A

Defendants-Appellees

I, Morris May ("May"), the pro se appellant-movant ("appellant") herein, hereby moves the Court to certify questions to the United States Supreme Court under 28 U.S.C. Section 1254 (2).

MEMORANDUM IN SUPPORT

The issues presented on this appeal were of first impression. The issues of thirty (30) pages for an amicus curiae brief, the acceptance of the two (2) amicus curiae briefs represented by an attorney that argued that the statute is unconstitutional, the denial of the pro se amicus curiae brief that argued that the statute is unconstitutional, and the right of a nonparty movant to appeal the district court's order denying relief when the nonparty movant is privy to the district court's record as a movant or an amicus curiae. The certified questions are requested to resolve conflict within the decisions of the Second Circuit, to bring uniformity of decisions within the Second Circuit, the other Circuits, and the United States Supreme Court. The certified questions are:

Whether the thirty (30) page limit under Rules 29(c) and 32(a)(7)(A) of the Federal Rules of Appellate Procedure ("Fed. R. App. P.") and the controlling precedent of Abu-Jamal v. Horn, paed.uscourts.gov/documents/opinions/00d0617p.pdf, pp. 4-5, fn. 2 (E.D. Pennsylvania 2000), affirmed sub. nom. Abu-Jamal v. Horn, 520 F.3d 272 (3rd Cir. 2008), vacated on other grounds sub. nom Beard v. Abu-Jamal, 130 S.Ct. 1134 (2010), are applicable for an amicus curiae brief? This was resolved by the Third Circuit and the United States Supreme Court, but not by this Court on this appeal. This issue is applicable to all of the district courts and the appellate courts in the United States. The certified question is requested because the significance of the issue extends beyond this case and appeal. Price v. Time, Inc., 304 F. Supp. 2d 1294, 1297 (N.D. Ala., Southern Division 2004). The deputy court clerk of the United States Court of Appeals for the Second Circuit rejected the pro se amicus curiae brief for the reason of being an oversized brief under Rule 27(d)(2) of the Fed. R. App. P., which applies to a party appellant or a party appellee.

Whether the pro se movant May was improperly denied the right as a pro se to the filing of an amicus curiae brief, Leftridge v. Connecticut State Trooper Officer # 1283, 640 F.3d 62, 64 (2nd Cir. 2011), that was a helpful amicus curiae brief, Evans v. Stephens, 407 F.3d 1272, 1284 (11th Cir. 2005) (en banc); Boim v. Quranic Literacy Institute and Holy Land Foundation for Relief and Development, 291 F.3d 1000, 1010 (7th Cir. 2002); and Boddie v. Wyman, 323 F. Supp. 1189, 1190 (N.D. N.Y. 1970), and the liberty to pursue a calling or occupation under the Due Process Clause of the 14th Amendment of the United States Constitution, Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 378 (1978); Nebbia v. New York, 291 U.S. 502, 528 (1934); Thomas v. Independent Township, 463 F.3d 285, 297 (3rd Cir. 2006); Wroblewski v. City of Washburn, 965 F.2d 452, 455 (7th Cir. 1992); Tichon v. Harder, 438 F.2d 1396,1402, fn. 9 (2nd Cir. 1971); Eisen v. Eastman, 421 F.2d 560, 565 (2nd Cir. 1969); and Parson v. Pond, 126 F. Supp. 2d 205, 217 (D. Conn. 2006), when the two (2) amicus curiae briefs represented by an attorney also argued that the statute is unconstitutional and the amicus curiae briefs were accepted for filing by the district court and the United States Court of Appeals for the Second Circuit? The Court should vacate and remand for the filing and acceptance of the pro se amicus curiae brief (DOCUMENT 69, DOCUMENT "A"). Leftridge, supra at 69 (2nd Cir. 2011). The issues were raised in the pro se appellant May's motion to expedite and for relief attached hereto as DOCUMENT "M."

Whether a nonparty, privy to the district court's record as a movant or an amicus curiae, proceeding as a pro se or represented by an attorney, has the right to appeal from a district court's order denying relief? Whether Boston & Providence Railroad Stockholders Development Group v. Smith, 333 F.2d 651. 652 (2nd Cir. 1964) (per curiam), citing Clark v. Sandusky, 205 F.2d 915, 917 (7th Cir. 1953); and Earn Line S.S. Company v. Sutherland, 254 F. 126, 129 (S.D.N.Y. 1918), aff. sub. nom. The Claveresk, 264 F. 276 (2nd Cir. 1920) are both misread and should be corrected or overruled by the United States Supreme Court? These issues were raised in the pro se appellant May's motion for panel reconsideration and for reconsideration en banc.

Whether the district court and the appellate court has jurisdiction over a nonparty, privy to the district court's record as a movant or an amicus curiae, under the Due Process Clause of the 14th Amendment of the United States Constitution? This issue was raised in the motion to expedite and for relief, filed on May 20, 2015, at Document "H," at page 3. This question is to maintain uniformity within the Second Circuit, as three (3) cases are cited from the Second Circuit, and one (1) case is cited from the Seventh Circuit, that have resolved this issue.

The statute was repealed on September 9, 2015, and the appellant May submitted for filing a motion to expedite and for relief on September 30, 2015, which the Court received on October 2, 2015, attached hereto as DOCUMENT "M." The motion was not considered by the Court on October 9, 2015. Whether an intervening change in the law gives the United States Supreme Court equitable power under Rule 60(b) of the Fed. R. App. P. to vacate judgments to accomplish justice?

For the following reasons, the appellant May requests of the Court to certify the questions to the United States Supreme Court under 28 U.S.C. Section 1254(2), United States v. Penaranda, 375 F.3d 238, 240 (2nd Cir. 2004) (en banc), certified questions dismissed 543 U.S. 1117 (2005), and to expedite based on the repeal of the statute and for the plaintiffs and the defendants to conclude in the district court under the joint indefinite stay of the litigation. United States, supra at 248, fn. 10 (2nd Cir. 2004) (en banc).

Respectfully submitted,

Morris May

Morris May (pro se)
Movant-Appellant
P.O. Box 558
Cincinnati, Ohio 45222-0558

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PRO SE MOVANT-APPELLANT MAY'S MOTION TO CERTIFY QUESTIONS was mailed to Catherine O'Hagan Wolfe, Clerk of Court, United States Court of Appeals for the Second Circuit, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007-1502 by depositing in the United States mail with first-class United States mail postage prepaid on this 27th day of October, 2015 under Rules 25(a)(2)(B)(i), 25(d)(1)(B)(i)(ii)(iii), and 25(d)(2) of the Federal Rules of Appellate Procedure, and that a copy was sent to Mr. Shay Dvoretzky, Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001 and Ms. Susan Paulson, New York City Law Department, 100 Church Street, New York, New York 10007 by first-class U.S. mail on this 27th day of October, 2015.

Morris May

Morris May (pro se)

DOCUMENT "M"

MEMORANDUM IN SUPPORT

The pro se appellant's May's motion for leave to file an amicus curiae brief (DOCUMENT "A" of DOCUMENT 69) was submitted for filing to the Court on November 15, 2013. The deputy court clerk of the Court rejected it as an oversized brief (district court's order of February 11, 2015 at page 2) giving the reasons that it exceeded the 20 page limit of Rule 27(d)(2) of the Fed. R. App. P. The appellant May filed a motion for relief under 60(a) and 60(b) of the Federal Rules of Civil Procedure (F. R. Civ. P.") (DOCUMENT 69), to correct the omission of DOCUMENT "A" of DOCUMENT 69. The district court stated that "this Court is in no position to correct it," therefore denying relief under Rules 60(a) and Rules 60(b) of the Fed. R. Civ. P., which is the subject matter of this appeal. The district court denied relief without considering the procedural issue of Rules 29(c) and 32(a)(7)(a) of the Fed. R. App. P., that has a 30 page limit for an amicus curiae brief, under the controlling precedent of Abu-Jamal. Rule 27(d)(2) of the Fed. R. App. P. has a 20 page limit for a party appellant or a party defendant. This Court should have filed it under the controlling precedent of Abu-Jamal.

The district court denied "DOCUMENT "A" for the reason that it argues that the Section 181.21 is unconstitutional. The district court's February 11, 2015 ORDER, states at page 3, "substantially, the motion argues that enforcement of Section 181.21 is unconstitutional." The order further states, "to the extent that Mr. May offers his submission as an amicus curiae brief in support of this position, the motion is denied." DOCUMENT "A" was an attachment to the motion for relief under Rules 60(a) and 60(b) of the F. R. Civ. P. (DOCUMENT 69). The two (2) amicus curiae briefs in support of the plaintiffs argued that the statute is unconstitutional, and have filings in the district court and in this Court on the first appeal, that were submitted for filing by an attorney. The pro se appellant May was improperly denied the right to proceed pro se, Leftridge v. Connecticut State Trooper Officer # 1283, 640 F.3d 62, 64 (2nd Cir. 2011), an abuse of discretion, Miranda v. United States, 455 F.2d 402, 405 (2nd Cir. 1972), and the Court should vacate and remand with instructions that the district court file the pro se appellant May's amicus curiae brief (DOCUMENT 69, attachment DOCUMENT "A"). Leftridge, supra at 69 (2nd Cir. 2011).

The district court abused it's discretion, Miranda v. United States, 455 F.2d 402, 405 (2nd Cir. 1972), by not deciding the procedural issue of Rule 27(d)(2) of the Fed. R. App. P. and Rules 29(c) and 32(a)(7)(A) of the Fed. R. App. P., and by denying DOCUMENT "A," which was only attached to the motion for relief under Rules 60(a) and 60(b) of the Fed. R. Civ. P. (DOCUMENT 69). The district court abused it's discretion by stating that it was "in no position to correct it," declining jurisdiction under Rules 60(a) and 60(b) of the Fed. R, Civ. P., and denying the amicus curiae brief, which was submitted as an attachment to the Rule 60(a) and 60(b) of the Fed. R, Civ. P. motion (DOCUMENT 69).

The plaintiffs and the defendant-appellees did not oppose the movant May's motions in the district court, nor have they opposed the movant-appellant's May's motions in this Court,

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DOCUMENT "M"

and therefore the motions should be granted as unopposed. Pomerlau v. West Springfield Public Schools, 362 F. 3d 143, 144 (1st Cir. 2004); Kelley v. Price Macemon, Inc., 992 F.2d 1408, 1412 (5th Cir. 1993); Cornell & Company, Inc. v. Occupation Safety and Health Review Commission, 573 F.2d 820, 822 (3rd Cir. 1978); Onofre Polanco v. 34th Street Partnership, Inc., 724 F. Supp. 2d 2d 420 422 (S.D.N.Y. 2010); Hamilton v. Warden of Clinton Correctional Facility, 573 F. Supp. 2d 779 (S.D.N.Y. 2008); and Race Safe Systems, Inc. v. Indy Racing League, 251 F. Supp. 2d 1106, 1109-1110 (N.D.N.Y. 2003).

On September 9, 2015, the New York City Department of Health and Mental Hygiene voted to repeal Section 181.21 of the York City Health Code. United States v. Chambers, 291 U.S. 217, 222 (1934). The pro se movant-appellant May could not have brought this before August 27, 2015, Triestman v. United States, 124 F.3d 361, 380 (2nd Cir. 1997), and this is a new issue. Triestman, supra at 368-369 (2nd Cir. 1997). The September 9, 2015, repeal was not available before August 27, 2015. Poe v. New York City Department of Social Services, 709 F.2d 782, 789 (2nd Cir. 1983), cert. den. 464 U.S. 864 (1983). The pro se movant-appellant May has good reason for filing it now. Zdanok v. Glidden Company, 327 F.2d 944, 953 (2nd Cir. 1964), cert. den. 377 U.S. 934 (1964).

The repeal that occurred on September 9, 2015, is an intervening change in the law for Court to grant the pro se appellant's May's motion for relief under Rules 60(a) and 60(b) of the F. R. Civ. P. (DOCUMENT 69), Phelps v. Alameida, 569 F.3d 1120, 1131. fn. 12 (9th Cir. 2009), cert . den. 130 S. Ct. 1072 (2010); Williams v. Butz, 843 F.2d 1135, 1137 (11th Cir. 1988), cert. den. 488 U.S. 956 (1988); and Systems Federation v. Wright, 364 U.S. 642, 647 (1961), because the United States Supreme Court has equitable power under Rule 60(b) to vacate judgments to accomplish justice, Phelps, supra at 1141 (9th Cir. 2009), and therefore this Court should grant the pro se appellant May's motion for relief under Rules 60(a) and 60 (b), reverse the district court's denial, and remand with instructions to the district court to file the pro se appellant's May's amicus curiae brief (DOCUMENT "A" attached to DOCUMENT 69). Phelps, supra at 1141 (9th Cir. 2009), cert. den. 130 S. Ct. 1072 (2010); Williams, supra at 1139 (11th Cir. 1988), cert. den. 488 U.S. 956 (1988); and Systems Federation, supra at 653 (!961)

For the following reasons the pro se movant-appellant May requests of the Court to expedite, based on the previously filed motions in the Court, so that the plaintiffs and the defendants-appellees can conclude in the district court under the joint indefinite stay of the litigation.

"O"

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A pro se, Willis v. Trans World Airlines, Inc., 200 F. Supp. 360, 361 (S.D. Cal. 1961), suffered unjust discrimination, Willis, supra at 367 (S.D. Cal. 1961), and was awarded compensatory damages, exemplary damages, and costs. Willis, supra at 368 (S.D. Cal. 1961). The discrimination was the "bumping" of passengers. Mason v. Belieu, 543 F.2d 215, 219 (D.C. Cir. 1976), cert. den. 429 U.S. 852 (1976), citing Willis, supra at 360 (S.D. Cal. 1961). "Bumping" is a delay from an airline flight, Sassouni v. Olympic Airways, 769 F. Supp. 537, 540 (S.D.N.Y. 1991), which is a claim, Sassouni, supra at 541 (S.D.N.Y. 1991), by a pro se litigant. Sassouni, supra at 538 (S.D.N.Y. 1991).

A pro se litigant, Shepherd v. Wenderlich, 746 F. Supp. 2d 430, 431 (N.D.N.Y. 2010), was awarded $1.00 damages and $1.40 attorney fees nder 42 U.S.C. Sections 1988 and 1988(b). Shepherd v. Goord, 662 F. 3d 603, 610 (2nd Cir. 2011). The fees were capped under 42 U.S.C. Section 1997e(d)(2). Shepherd, supra at 605 (2nd Cir. 2011).

A pro se litigant, Bandera. City of Quincy, 344 F. 3d 47, 48 (1st Cir. 2003), was awarded attorney fees and costs under 42 U.S.C. Sections 1988 and 1988(b). Bandera, supra at 52 (1st Cir. 2003).

A pro se litigant as awarded attorney fees and costs under 42 U.S.C. Sections 1988 and 1988(b). Parker v. Lewis, 670 F.2d 249, 250 (D.C. Cir. 1982).

A pro se litigant was awarded attorney fees and costs under 42 U.S.C. Section 1988 for work at the district court and the appellate court. Burt v. Hennessey, 929 F. 2d 457, 460 (9th Cir. 1991). This case was cited in Nugget Hydroelectric, LP v. Pacific Gas and Electric Company, 981 F.2d 429, 439 (9th Cir. 1992), cert. den. 508 U.S. 908 (1993).

Metzitzah b'peh and the pro se movant May's legal papers in the Court of Appeals and this Court are property rights and civil rights under 42 U.S.C. Section 1981 and 1982. The hourly rate for civil rights is $600.00 an hour. Rozell v. Ross-Holst, 576 F. Supp. 2d 527, 546 (S.D.N.Y. 2008). The pro se movant May is claiming seven (7) months of intensive and extensive research for the preparation and submission for filing of the November 15, 2013, motion for leave to file an amicus curiae brief (DOCUMENT 69, DOCUMENT "A"), 120 hours for each month, for a total of 840 hours. From August, 2014 to November, 2014, 140 hours for each month, for a total of 560 hours, for the motion filed in this Court (DOCUMENT 69). For the March 10, 2015 motion a total of twenty hours. For the April 17, 2015 motion a total of 40 hours. For the May 20, 2015 motion filed in the Court of Appeals a total of 40 hours. For the June 8, 2015 motion a total of 30 hours. For the June 12, 2015 motion filed in the Court of Appeals a total of 30 hours. For the August 11, 2015 motion filed in the Court of Appeals a total of 20 hours. For the motion for reconsideration and motion reconsideration en banc filed on August 26, 2015, a total of 60 hours. The total number of hours for the intensive and extensive research for the preparation and submission of legal papers for filing is 1,600 hours. 1,600 hours multiplied by $600.00 an hour is $960,000.00.

The certified questions are attached hereto as DOCUMENT "O." The certified questions were submitted for filing and returned as the mandate of the Court of Appeals was issued on November 2, 2015, in Appeal No. 15-1524.

Respectfully submitted,

Morris May

Morris May (pro se)
Movant
P.O. Box 558
Cincinnati, Ohio 45222-0558

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PRO SE MOVANT MAY'S MOTION FOR ATTORNEY FEES AND COSTS, TO CERTIFY QUESTIONS, AND TO EXPEDITE was sent to Mr. Shay Dvoretzky, Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001 and Michelle Goldberg-Cahn and Rachel K. Moston, Office of the Corporation Counsel, New York City Law Department, 100 Church Street, New York, New York 10007 by first-class U.S. mail on this 1st day of December, 2015.

Morris May

Morris May (pro se)
Movant

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MORRIS MAY

APPEAL NO. 15-1524

PRO SE MOVANT-APPELLANT MAY'S

MOTION TO CERTIFY QUESTIONS

MAY'S

Movant-Appellant

v.

CENTRAL RABBINICAL CONGRESS OF THE U.S.A. & CANADA, ET AL.

Plaintiffs

v.

NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE, ET A

Defendants-Appellees

I, Morris May ("May"), the pro se appellant-movant ("appellant") herein, hereby moves the Court to certify questions to the United States Supreme Court under 28 U.S.C. Section 1254 (2).

MEMORANDUM IN SUPPORT

The issues presented on this appeal were of first impression. The issues of thirty (30) pages for an amicus curiae brief, the acceptance of the two (2) amicus curiae briefs represented by an attorney that argued that the statute is unconstitutional, the denial of the pro se amicus curiae brief that argued that the statute is unconstitutional, and the right of a nonparty movant to appeal the district court's order denying relief when the nonparty movant

"0"

is privy to the district court's record as a movant or an amicus curiae. The certified questions are requested to resolve conflict within the decisions of the Second Circuit, to bring uniformity of decisions within the Second Circuit, the other Circuits, and the United States Supreme Court. The certified questions are:

Whether the thirty (30) page limit under Rules 29(c) and 32(a)(7)(A) of the Federal Rules of Appellate Procedure ("Fed. R. App. P.") and the controlling precedent of Abu-Jamal v. Horn, paed.uscourts.gov/documents/opinions/00d0617p.pdf, pp. 4-5, fn. 2 (E.D. Pennsylvania 2000), affirmed sub. nom. Abu-Jamal v. Horn, 520 F.3d 272 (3rd Cir. 2008), vacated on other grounds sub. nom Beard v. Abu-Jamal, 130 S.Ct. 1134 (2010), are applicable for an amicus curiae brief? This was resolved by the Third Circuit and the United States Supreme Court, but not by this Court on this appeal. This issue is applicable to all of the district courts and the appellate courts in the United States. The certified question is requested because the significance of the issue extends beyond this case and appeal. Price v. Time, Inc., 304 F. Supp. 2d 1294, 1297 (N.D. Ala., Southern Division 2004). The deputy court clerk of the United States Court of Appeals for the Second Circuit rejected the pro se amicus curiae brief for the reason of being an oversized brief under Rule 27(d)(2) of the Fed. R. App. P., which applies to a party appellant or a party appellee.

Whether the pro se movant May was improperly denied the right as a pro se to the filing of an amicus curiae brief, Leftridge v. Connecticut State Trooper Officer # 1283, 640 F.3d 62, 64 (2nd Cir. 2011), that was a helpful amicus curiae brief, Evans v. Stephens, 407 F.3d 1272, 1284 (11th Cir. 2005) (en banc); Boim v. Quranic Literacy Institute and Holy Land Foundation for Relief and Development, 291 F.3d 1000, 1010 (7th Cir. 2002); and Boddie v. Wyman, 323 F. Supp. 1189, 1190 (N.D. N.Y. 1970), and the liberty to pursue a calling or occupation under the Due Process Clause of the 14th Amendment of the United States Constitution, Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 378 (1978); Nebbia v. New York, 291 U.S. 502, 528 (1934); Thomas v. Independent Township, 463 F.3d 285, 297 (3rd Cir. 2006); Wroblewski v. City of Washburn, 965 F.2d 452, 455 (7th Cir. 1992); Tichon v. Harder, 438 F.2d 1396,1402, fn. 9 (2nd Cir. 1971); Eisen v. Eastman, 421 F.2d 560, 565 (2nd Cir. 1969); and Parson v. Pond, 126 F. Supp. 2d 205, 217 (D. Conn. 2006), when the two (2) amicus curiae briefs represented by an attorney also argued that the statute is unconstitutional and the amicus curiae briefs were accepted for filing by the district court and the United States Court of Appeals for the Second Circuit? The Court should vacate and remand for the filing and acceptance of the pro se amicus curiae brief (DOCUMENT 69, DOCUMENT "A"). Leftridge, supra at 69 (2nd Cir. 2011). The issues were raised in the pro se appellant May's motion to expedite and for relief attached hereto as DOCUMENT "M."

Whether a nonparty, privy to the district court's record as a movant or an amicus curiae, proceeding as a pro se or represented by an attorney, has the right to appeal from a district court's order denying relief? Whether Boston & Providence Railroad Stockholders Development Group v. Smith, 333 F.2d 651. 652 (2nd Cir. 1964) (per curiam), citing Clark v. Sandusky, 205 F.2d 915, 917 (7th Cir. 1953); and Earn Line S.S. Company v. Sutherland, 254 F. 126, 129 (S.D.N.Y. 1918), aff. sub. nom. The Claveresk, 264 F. 276 (2nd Cir. 1920) are both misread and should be corrected or overruled by the United States Supreme Court? These issues were raised in the pro se appellant May's motion for panel reconsideration and for reconsideration en banc.

Whether the district court and the appellate court has jurisdiction over a nonparty, privy to the district court's record as a movant or an amicus curiae, under the Due Process Clause of the 14th Amendment of the United States Constitution? This issue was raised in the motion to expedite and for relief, filed on May 20, 2015, at Document "H," at page 3. This question is to maintain uniformity within the Second Circuit, as three (3) cases are cited from the Second Circuit, and one (1) case is cited from the Seventh Circuit, that have resolved this issue.

The statute was repealed on September 9, 2015, and the appellant May submitted for filing a motion to expedite and for relief on September 30, 2015, which the Court received on October 2, 2015, attached hereto as DOCUMENT "M." The motion was not considered by the Court on October 9, 2015. Whether an intervening change in the law gives the United States Supreme Court equitable power under Rule 60(b) of the Fed. R. App. P. to vacate judgments to accomplish justice?

For the following reasons, the appellant May requests of the Court to certify the questions to the United States Supreme Court under 28 U.S.C. Section 1254(2), United States v. Penaranda, 375 F.3d 238, 240 (2nd Cir. 2004) (en banc), certified questions dismissed 543 U.S. 1117 (2005), and to expedite based on the repeal of the statute and for the plaintiffs and the defendants to conclude in the district court under the joint indefinite stay of the litigation. United States, supra at 248, fn. 10 (2nd Cir. 2004) (en banc).

Respectfully submitted,

Morris May

Morris May (pro se)
Movant-Appellant
P.O. Box 558
Cincinnati, Ohio 45222-0558

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PRO SE MOVANT-APPELLANT MAY'S MOTION TO CERTIFY QUESTIONS was mailed to Catherine O'Hagan Wolfe, Clerk of Court, United States Court of Appeals for the Second Circuit, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007-1502 by depositing in the United States mail with first-class United States mail postage prepaid on this 27th day of October, 2015 under Rules 25(a)(2)(B)(i), 25(d)(1)(B)(i)(ii)(iii), and 25(d)(2) of the Federal Rules of Appellate Procedure, and that a copy was sent to Mr. Shay Dvoretzky, Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001 and Ms. Susan Paulson, New York City Law Department, 100 Church Street, New York, New York 10007 by first-class U.S. mail on this 27th day of October, 2015.

Morris May

Morris May (pro se)

"O"

DOCUMENT "M"

MEMORANDUM IN SUPPORT

The pro se appellant's May's motion for leave to file an amicus curiae brief (DOCUMENT "A" of DOCUMENT 69) was submitted for filing to the Court on November 15, 2013. The deputy court clerk of the Court rejected it as an oversized brief (district court's order of February 11, 2015 at page 2) giving the reasons that it exceeded the 20 page limit of Rule 27(d)(2) of the Fed. R. App. P. The appellant May filed a motion for relief under 60(a) and 60(b) of the Federal Rules of Civil Procedure (F. R. Civ. P.") (DOCUMENT 69), to correct the omission of DOCUMENT "A" of DOCUMENT 69. The district court stated that "this Court is in no position to correct it," therefore denying relief under Rules 60(a) and Rules 60(b) of the Fed. R. Civ. P., which is the subject matter of this appeal. The district court denied relief without considering the procedural issue of Rules 29(c) and 32(a)(7)(a) of the Fed. R. App. P., that has a 30 page limit for an amicus curiae brief, under the controlling precedent of Abu-Jamal. Rule 27(d)(2) of the Fed. R. App. P. has a 20 page limit for a party appellant or a party defendant. This Court should have filed it under the controlling precedent of Abu-Jamal.

The district court denied "DOCUMENT "A" for the reason that it argues that the Section 181.21 is unconstitutional. The district court's February 11, 2015 ORDER, states at page 3, "substantially, the motion argues that enforcement of Section 181.21 is unconstitutional." The order further states, "to the extent that Mr. May offers his submission as an amicus curiae brief in support of this position, the motion is denied." DOCUMENT "A" was an attachment to the motion for relief under Rules 60(a) and 60(b) of the F. R. Civ. P. (DOCUMENT 69). The two (2) amicus curiae briefs in support of the plaintiffs argued that the statute is unconstitutional, and have filings in the district court and in this Court on the first appeal, that were submitted for filing by an attorney. The pro se appellant May was improperly denied the right to proceed pro se, Leftridge v. Connecticut State Trooper Officer # 1283, 640 F.3d 62, 64 (2nd Cir. 2011), an abuse of discretion, Miranda v. United States, 455 F.2d 402, 405 (2nd Cir. 1972), and the Court should vacate and remand with instructions that the district court file the pro se appellant May's amicus curiae brief (DOCUMENT 69, attachment DOCUMENT "A"). Leftridge, supra at 69 (2nd Cir. 2011).

The district court abused it's discretion, Miranda v. United States, 455 F.2d 402, 405 (2nd Cir. 1972), by not deciding the procedural issue of Rule 27(d)(2) of the Fed. R. App. P. and Rules 29(c) and 32(a)(7)(A) of the Fed. R. App. P., and by denying DOCUMENT "A," which was only attached to the motion for relief under Rules 60(a) and 60(b) of the Fed. R. Civ. P. (DOCUMENT 69). The district court abused it's discretion by stating that it was "in no position to correct it," declining jurisdiction under Rules 60(a) and 60(b) of the Fed. R, Civ. P., and denying the amicus curiae brief, which was submitted as an attachment to the Rule 60(a) and 60(b) of the Fed. R, Civ. P. motion (DOCUMENT 69).

The plaintiffs and the defendant-appellees did not oppose the movant May's motions in the district court, nor have they opposed the movant-appellant's May's motions in this Court,

DOCUMENT "M"

and therefore the motions should be granted as unopposed. Pomerlau v. West Springfield Public Schools, 362 F. 3d 143, 144 (1st Cir. 2004); Kelley v. Price Macemon, Inc., 992 F.2d 1408, 1412 (5th Cir. 1993); Cornell & Company, Inc. v. Occupation Safety and Health Review Commission, 573 F.2d 820, 822 (3rd Cir. 1978); Onofre Polanco v. 34th Street Partnership, Inc., 724 F. Supp. 2d 2d 420 422 (S.D.N.Y. 2010); Hamilton v. Warden of Clinton Correctional Facility, 573 F. Supp. 2d 779 (S.D.N.Y. 2008); and Race Safe Systems, Inc. v. Indy Racing League, 251 F. Supp. 2d 1106, 1109-1110 (N.D.N.Y. 2003).

On September 9, 2015, the New York City Department of Health and Mental Hygiene voted to repeal Section 181.21 of the York City Health Code. United States v. Chambers, 291 U.S. 217, 222 (1934). The pro se movant-appellant May could not have brought this before August 27, 2015, Triestman v. United States, 124 F.3d 361, 380 (2nd Cir. 1997), and this is a new issue. Triestman, supra at 368-369 (2nd Cir. 1997). The September 9, 2015, repeal was not available before August 27, 2015. Poe v. New York City Department of Social Services, 709 F.2d 782, 789 (2nd Cir. 1983), cert. den. 464 U.S. 864 (1983). The pro se movant-appellant May has good reason for filing it now. Zdanok v. Glidden Company, 327 F.2d 944, 953 (2nd Cir. 1964), cert. den. 377 U.S. 934 (1964).

The repeal that occurred on September 9, 2015, is an intervening change in the law for Court to grant the pro se appellant's May's motion for relief under Rules 60(a) and 60(b) of the F. R. Civ. P. (DOCUMENT 69), Phelps v. Alameida, 569 F.3d 1120, 1131. fn. 12 (9th Cir. 2009), cert . den. 130 S. Ct. 1072 (2010); Williams v. Butz, 843 F.2d 1135, 1137 (11th Cir. 1988), cert. den. 488 U.S. 956 (1988); and Systems Federation v. Wright, 364 U.S. 642, 647 (1961), because the United States Supreme Court has equitable power under Rule 60(b) to vacate judgments to accomplish justice, Phelps, supra at 1141 (9th Cir. 2009), and therefore this Court should grant the pro se appellant May's motion for relief under Rules 60(a) and 60 (b), reverse the district court's denial, and remand with instructions to the district court to file the pro se appellant's May's amicus curiae brief (DOCUMENT "A" attached to DOCUMENT 69). Phelps, supra at 1141 (9th Cir. 2009), cert. den. 130 S. Ct. 1072 (2010); Williams, supra at 1139 (11th Cir. 1988), cert. den. 488 U.S. 956 (1988); and Systems Federation, supra at 653 (!961)

For the following reasons the pro se movant-appellant May requests of the Court to expedite, based on the previously filed motions in the Court, so that the plaintiffs and the defendants-appellees can conclude in the district court under the joint indefinite stay of the litigation.

"O"

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TO:

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District Court for the Southern District of
Daniel Patrick Moynihan United States Courth
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